

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

ANNUAL COMPLIANCE REVIEW, 2012

Docket No. ACR2012

NOTICE OF FILING OF PUBLIC AND NONPUBLIC LIBRARY REFERENCES
AND APPLICATION FOR NONPUBLIC TREATMENT
(February 6, 2013)

The United States Postal Service hereby gives notice of the filing today of the following Category 4 public library reference in Docket No. ACR2012:

**USPS-FY12-46 Public Materials Provided in Response to
Chairman's Information Request No. 5**

The United States Postal Service also gives notice of the filing today of the following Category 4 nonpublic library reference in Docket No. ACR2012:

**USPS-FY12-NP35 Nonpublic Materials Provided in Response to
Chairman's Information Request No. 5**

Each library reference contains a preface that describes its contents in more detail.

The materials contained in USPS-FY12-NP35 that relate to Questions 5-10 concern competitive and international products. With respect to these materials, the Postal Service incorporates by reference the Application of the United States Postal Service for Nonpublic Treatment of Materials that was filed as Attachment Two to the FY 2012 Annual Compliance Report on December 28, 2012.

The material contained in USPS-FY12-NP35 that relates to Question 25 is commercially sensitive site-specific information. With respect to this material, the Postal Service has attached an application for nonpublic treatment to this pleading.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Pricing & Product Support

Nabeel R. Cheema

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-7178, Fax -5402
February 6, 2013

**APPLICATION FOR NONPUBLIC TREATMENT
OF LIBRARY REFERENCE USPS-FY12-NP35**

In accordance with 39 C.F.R. § 3007.21 and Order No. 225, the United States Postal Service hereby applies for nonpublic treatment of certain data filed under seal with the Commission as USPS-FY12-NP35. Specifically, this application relates to the unredacted response to Question 25 of Chairman's Information Request No. 5. That response contains a list of mail processing sites where the Postal Service determined that FSS performance needed improvement.

By operation of 39 U.S.C. § 410(c)(2), information of a commercial nature, which under good business practice would not be publicly disclosed, is not required to be disclosed to the public. The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). Because the information covered by this application falls within the scope of information not required to be disclosed publicly, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their nonpublic treatment.

(1) The rationale for claiming that the materials are nonpublic, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The unredacted response to Question 25 of Chairman's Information Request No. 5 contains commercial information and trade secrets, and under good business practice

it would not be publicly disclosed. Therefore, it should be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).¹ The Postal Service believes that no commercial entity in the delivery or advertising businesses would disclose sites or areas where it believes its business performance is weaker than normal.

(2) Identification, including name, phone number, and email address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

None.

(3) A description of the materials claimed to be nonpublic in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are nonpublic;

The unredacted response to Question 25 of Chairman's Information Request No. 5 contains a list of mail processing sites where the Postal Service determined that FSS performance needed improvement.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the information covered by this application were to be disclosed publicly, the Postal Service considers it quite likely that it would suffer commercial harm. Competitors in the advertising business could use the information to determine markets

¹ In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1 (Mar. 20, 2009), at 11.

where the performance of direct mail advertising through the Postal Service is weaker than average and then target those markets in particular, to take business away from the Postal Service.

(5) At least one specific hypothetical, illustrative example of each alleged harm; Identified harm:

Harm: An advertising delivery firm gains market share from the Postal Service.

Hypothetical: The unredacted response to Question 25 of Chairman's Information Request No. 5 is disclosed publicly. Firms engaged in the direct delivery of advertising material to homes and businesses analyze the response and identify markets where the Postal Service's performance in delivering direct mail advertising is weaker than normal. They then target advertisers in those markets and persuade them to convert their direct mail advertisements into unaddressed advertisements delivered by those firms. The Postal Service loses volume and revenue.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the materials filed nonpublicly should be withheld from persons in the mailing, delivery, and advertising industries, as well as their consultants and attorneys, and from any customers or potential customers of Postal Service products.

(7) The length of time deemed necessary for the nonpublic materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that nonpublic materials shall lose nonpublic status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the foregoing reasons, the Postal Service requests that the Postal Regulatory Commission grant its application for nonpublic treatment of USPS-FY12-NP35.